show, for it evinces a disposition on the part of the Court to look solely to the letter of State laws, and to disregard both spirit and practical effect, so that many State tax laws, which have hitherto been declared void, may now, by a few judicious changes in the terms and phrases used, be put into full force and effect, although their practical operation is in no wise altered. Thus has the Court made a fatal breach in that strong bulwark of decisions by which all the efforts of the States to attack interstate commerce have, up to this time, been successfully resisted, and thus it has opened a wide door for the evasion of those wise principles which the former members of the Court laid down for the protection of the commercial interests of the country. There is much food for reflection in the thought suggested by the decisions of the Court for the last year, namely, how great a revolution of doctrine may result from a few changes in *personnel*.

FRANCIS COPE HARTSHORNE.

ABSTRACTS OF RECENT CASES.

Selected from the current of American and English Decisions.

BY

WILLIAM WHARTON SMITH, HORACE L. CHEYNEY,
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BANKING—CERTIFICATE OF DEPOSIT ISSUED BEFORE INCORPORATION.—A bank is not liable, even to an innocent holder, for value, on a certificate of deposit issued before its organization or incorporation, and signed as cashier by the person who afterwards became such, there being nothing to show that the bank ever received any consideration therefor: Long *v.* Citizens' Bank, Supreme Court of Utah, April 1, 1892, BLACKBURN, J. (29 Pacific Reporter, 878).—*J. A. McC.*

CARRIERS OF FREIGHT—DISCRIMINATION—COMMON LAW LIABILITY.—The complainant in this case alleged that the defendant company—a common carrier—charged the complainant 12½ per cent. more than it did other merchants; that said charges were a discrimination against the plaintiff, and though often requested so to do, defendant refused to allow complainant the reduced rates. The facts of this case, for other reasons, not coming within the revised statutes of the State, the question was whether at common law the complainant would have had a right of action. It was held: That while at common law an action would lie for an unreasonable and excessive freight charge, yet there was nothing to hinder a carrier from carrying for favored individuals at an unreasonably low rate, or even gratis. The fact that one person is charged more than another is only evidence of a discrimination: Cowden *v.* Pacific Coast S. S. Co., Supreme Court of California, May 6, 1892 (GARVUTTE, J.).—*J. A. McC.*

CARRIERS OF PASSENGERS—UNLAWFUL EJECTION FOR REFUSING TO PAY FARE TWICE—DAMAGES—WHEN NOT EXCESSIVE.—Plaintiff, a passenger on one of defendant's trains, bought a ticket from Brunswick to Atlanta, and took passage on a train running between these points. Between Brunswick and Macon plaintiff gave his ticket to the conductor, and between Macon and Atlanta a new conductor demanded the fare between these latter points. Plaintiff proved to the satisfaction of the conductor that he had already delivered a ticket for the whole distance to a previous conductor. In spite of this the conductor, acting under a rule of the defendant company, threatened to eject him from the train if he did not pay again the fare for the last part of the trip. Plaintiff then paid and sued to recover damages for being compelled to pay twice. Held: That the law of the State was of higher authority than the rule of the company, that the company was liable, and that $500 damages was not excessive: Supreme Court of Georgia, per Curiam, LUMPKIN, J., dissenting as to the amount of the damages being excessive, February 15, 1892 (14 Southeast. Rep., 708).—*W. W. S.*

CHATTEL MORTGAGES—LIEN—DISCHARGE—REDEMPTION.—The owner of a colt gave a recorded mortgage on it to secure his promissory note. Some time thereafter, a third party, having acquired a lien for keeping the colt, the mortgagees paid the lien and took another note for the amount of the old note, *plus* the lien, and took as security therefor a second mortgage, but did not satisfy the first mortgage. Between the giving of the mortgages the owner sent the colt to one A to be broken with whom it had remained for some time, when the mortgagees took the colt from his possession, against his protest and claim of lien, and sold it at a foreclosure sale under the second mortgage. It was bid in for less than either of the mortgages. Upon an action of trover, brought by A against the mortgagees and vendees, at the foreclosure sale, for the conversion of the horse, it was held: (1) that the mere taking of the second note and mortgage could not operate as an abandonment of the first mortgage, as its lien remained unaffected until discharged by satisfaction; (2) the defendants, by the taking and selling of the colt, are not estopped from setting up the first mortgage against the plaintiff, as the foreclosure did not withdraw the property from the operation of the mortgage: Austin *v.* Bailey *et al.*, Supreme Court of Vermont, April 21, 1892, per ROWELL, J. (24 Atl. Rep., 245).—*H. N. S.*

CONDITIONAL PAYMENT—ACCEPTANCE OF ORDER.—A being indebted to B for $30, gave him an order on C for merchandise, not to exceed $30, to be charged on A's account. The price agreed on for the merchandise was $32.50, of which B paid $2.50 in cash. C refused to deliver the goods unless $30 was paid by B. In an action by B to recover $32.50 for breach of contract, held: That he could not recover, as the mere acceptance by a creditor of an obligation of a third person, in the absence of proof that the parties agreed that such obligations should be received as payment, cannot be regarded as more than a conditional payment: Williams *v.* Costello, Supreme Court of Alabama, April 27, 1892, per COLEMAN, J. (11 So. Rep., 9).—*H. N. S.*

CONFLICT OF LAW—FEDERAL AND STATE COURTS—MASTER AND SERVANT.—The relation of master and servant, and similar relations, is one solely of State control and regulation, and as in such cases the Federal courts are simply giving effect to State law, it is the duty of the Federal tribunals to follow the decisions of the State courts upon such questions: Kerlin *v.* Chicago, P. & St. L. R. R. Co., Circuit Court of United States, Northern District of Indiana, April 12, 1892, BAKER, J. (50 Fed. Rep., 185).—*H. L. C.*

CONFLICT OF LAWS — PERPETUITIES — BEQUESTS VALID WHERE MADE, BUT VOID WHERE CARRIED OUT.—A testatrix, living in Rhode Island, bequeathed some of her property upon certain trusts, to be maintained and administered in New York. The will was admitted to probate, and the executors accounted in Rhode Island. The trusts were valid in Rhode Island, but void in New York, being contrary to the New York statute against perpetuities. Held: That the courts of New York would enforce the trusts: Cross *et al. v.* United States Trust Co. of New York *et al.*, Court of Appeals of New York, O'BRIEN, J.; EARL, C. J., and PECKHAM, J., dissenting, March 1, 1892 (30 Northeast. Rep., 125).—*W. W. S.*)

CONSTITUTIONAL LAW—ACT CONTAINING TWO ITEMS OF APPROPRIATION.—The Act of March 31, 1891, laws of California, entitled "An Act to encourage the cultivation of ramie," etc., provides in Section 1 that $10,000 be appropriated for the "purpose of encouraging the cultivation of ramie." Section 2 provides an expenditure, either for the purchase of ramie roots for free distribution to farmers, or in the payment of a bounty for merchantable ramie. Section 4 provides for appointment and payment of a State superintendent. Held: That the Act contained two distinct items of appropriation for expressly different special purposes, and was in violation of Constitution, Art. IV, Sec. 34, of California, which provides that "no bill making appropriations of money . . . shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed:" Murray *v.* Colgan, Supreme Court of California, May 5, 1892, VANCLIEF, C. J. (29 Pacific Rep., 871).—*J. A. McC.*

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—WHERE STATE TAX IS NOT REGULATION OF.—The State of Pennsylvania, having levied a tax upon the gross receipts of all railroads doing business in the State, the State Supreme Court held the tax void as to interstate business, but enforced it as to receipts derived from transportation between two points in Pennsylvania, Mauch Chunk and Philadelphia, by way of Phillipsburg and Trenton, points in New Jersey, the carriage being continuous by the A Co. to Phillipsburg, and by the B Co. from there to Philadelphia, and the tax being confined to the receipts of the A Co., which were derived from transportation wholly within the State. On appeal, held: That the tax was not open to objection by reason of the particular way in which Philadelphia was reached from Mauch Chunk: Lehigh Valley R. R. Co. *v.* Pennsylvania, Chief-Justice FULLER, May 2, 1892 (Adv. Sheets, U. S. Rep,, Ed. No. 8).—*F. C. H.*

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—AUTHORITY OF STATE TO AUTHORIZE THE ERECTION OF A BRIDGE OVER A NAVIGABLE RIVER.—In the absence of Federal legislation a State has the power to authorize the erection of a bridge over a navigable stream within its limits, and such power is not confined to cases in which the navigable stream is wholly within the limits of the State, but exists as well as to those streams which extend to points beyond the boundaries of the State: Rhea *v.* Newport N. & M. V. R. R. Co., Circuit Court of the United States, District of Kentucky, April 7, 1892, JACKSON, J. (50 Fed. Rep., 16).—*H. L. C.*

CONSTITUTIONAL LAW—POLICE POWER—INTOXICATING LIQUORS—RESTRICTING MANUFACTURE, ETC., OF—VESTING IN AN INDIVIDUAL THE RIGHT TO SAY WHO SHALL MAKE, ETC.—An Act of a State Legislature authorized the establishment of an orphans' home, and made it unlawful for any person to make, sell, give, or transmit to any inmate of the home, or any person within three miles thereof, any spirituous or malt liquors, except upon the "written permission of the superintendent of such home." Defendant, at the time the act was passed, manufactured the prohibited articles within the three-mile radius. Held: That the act, which was otherwise constitutional, was not made unconstitutional by vesting in the superintendent of the home the authority to say who should and who should not make, sell, etc., the prohibited articles: State *v.* Barringer, Supreme Court of North Carolina, CLARK, J., March 23, 1892 (14 S. E. Rep., 781).—*W. W. S.*

CONTRACTS—VALIDITY OF WHEN MADE ON SUNDAY—WHAT CONSTITUTES A LABOR OF NECESSITY OR CHARITY.—Plaintiff, a single woman, 80 years old, was taken to a hospital on account of severe injuries, and while there executed, on a certain Sunday, an assignment transferring certain bank-accounts in trust for her benefit and support during life, with remainder to the assignee. A statute of Massachusetts, where the assignment was made, provides that whoever, on Sunday, "does any manner of labor, business, or work, except works of necessity or charity," shall be punished. Plaintiff sought to set aside the assignment upon the ground that it was unlawful under this statute, having been executed on the Lord's day. Held: That the assignment did not come within the statute, and that it would not be set aside: Donovan *v.* McCarty, Supreme Judicial Court of Massachusetts, ALLEN, J., February 25, 1892 (30 N. E. Rep., 221).—*W. W. S.*

CORPORATIONS—SUBSCRIPTION—WAIVER.—By the contract of subscription entered into by the defendant, it was agreed that the corporation should not be organized until $70,000 had been subscribed. The organization was, however, perfected before the subscription list reached $40,000. In an action for the unpaid balance of the defendant's subscription, it was held: That he could not avail himself of the defence of the defective organization, inasmuch as he had recognized the validity of the corporation and acquiesced in its expenditures by paying the first two calls on his subscription: California Southern Hotel Co. *v.* Collender, Supreme Court of California, March 28, 1892, VANCLIEF, C. (29 Pacific Rep., 859).—*J. A. McC.*

EVIDENCE—HOMICIDE—RES GESTÆ.—The deceased died from the effects of a wound in the head, inflicted by some sharp instrument, and on the trial of the defendant for murder, the prosecution offered in evidence, as part of the *res gestæ*, the statement of the deceased to a physician that the defendant had done it with a knife, which statement was made about an hour after the wound had been inflicted. Held: Inadmissible: People *v.* O'Brien, Supreme Court of Michigan, May 20, 1892, GRANT, J. (52 N. W. Rep., 84).—*J. A. McC.*

EVIDENCE—PRIVILEGED COMMUNICATIONS—HUSBAND AND WIFE.—Section 1881 of the Code of Civil Procedure provides that a person can not be examined as a witness in the following cases: (1) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage, etc. This provision simply effects the competency of a husband or wife as a witness and does not prohibit the production, by the administrator of the wife, of certain letters between husband and wife, where both are dead: Lloyd *v.* Pennie, Circuit Court of the United States, Northern District of California, March 29, 1892, MORROW, J. (50 Fed. Rep., 4).—*H. L. C.*

EVIDENCE—WITNESS—CREDIBILITY.—An instruction that if the testimony of a witness has been given under the influence of ill-will towards a party, and any portion of it is untrue as to any material fact, it may be entirely disregarded, is erroneous in failing to state that it must be knowingly and wilfully untrue, especially where there is nothing to show that the witness was actuated by ill-will, but only that he was not friendly: Bonnie *v.* Earll, Supreme Court of Montana, May 2, 1892, DEWITT, J. (29 Pacific Rep., 882).—*J. A. McC.*

FIXTURES—BETWEEN VENDOR AND VENDEE.—The plaintiff sold a portable saw-mill, to be paid for in instalments, the title and right of possession to remain in the plaintiff until the price is paid in full. The purchaser, being permitted by the contract of sale to run the machinery in several townships of a certain county, set it up on a farm in which he had an undivided interest. The boiler was bricked in, the engine set up on brick-work and bolted down to the foundation. Part of the machinery was roofed over. The purchaser afterwards conveyed his interest in the real estate to defendant, who operated the mill as sole owner. It was held: That the machinery remained personal property, and trover was the proper form of action to maintain for its recovery. In order to constitute a fixture there must not only be physical annexation in some form to the realty, but there must be unity of title, so that a conveyance of the realty would of necessity convey the fixture also: Lansing Iron and Engine Works *v.* Walker, Supreme Court of Michigan, April 22, 1892, MCGRATH, J. (51 N. W. Rep., 1061).—*J. A. McC.*

FRAUDULENT CONVEYANCES—CONSIDERATION—KNOWLEDGE OF GRANTEE.—The maker of a note conveyed land to the accommodation endorser, in consideration of the latter's agreement to pay the note and

a mortgage, and the next day made an assignment for the benefit of his creditors. A bill in equity, filed to set aside the conveyance as fraudulent, was dismissed, as the obligations assumed by the grantee fairly represented the value of the ground, and the transaction did not appear to be accompanied with fraud participated in by the grantee: Ellis *v.* Herrin *et al.*, Court of Chancery of New Jersey, April 20, 1892, per BIRD, V.C. (24 Atl. Rep., 129).—*H. N. S.*

HUSBAND AND WIFE—LIABILITY OF WIFE FOR DEBT OF HUSBAND.—The separate estate of a wife cannot be charged for an account due by her husband, simply because she wrote the creditor as follows: "You will please find enclosed $50—all I can raise at present. I hope to be able to give you more very soon: Please give credit and oblige, B.": Bohn's Est. *v.* Hoffer, Supreme Court of Colorado, April 25, 1892, REED, J. (29 Pacific Rep., 905).—*J. A. McC.*

HUSBAND AND WIFE—ACTION BROUGHT BY HUSBAND FOR WIFE'S SERVICES—WHEN IT WILL LIE.—Plaintiff kept a restaurant, at which one Kennedy took his meals, at the same time occupying a room in plaintiff's house. Plaintiff's wife helped him in his business and took care of the house, and, in addition to this, nursed Kennedy for some time. Kennedy died, and plaintiff sued his executors to recover compensation for his wife's services as nurse. Held: That a husband's common-law right to recover for his wife's services was not abrogated by the statutes of New York relative to married women, and that the suit would lie: Porter *v.* Dunn, Court of Appeals of New York, GRAY, J.; EARL, C. J., and O'BRIEN, J., dissenting, March 1, 1892 (30 N. E. Rep., 122).—*W. W. S.*

INSURANCE—TRANSFER OF INTEREST BY ONE MEMBER OF A PARTNERSHIP TO HIS COPARTNER.—The members of a partnership insured certain property of the firm, the policy of insurance containing a provision prohibiting any change "in the title or interest of the insured" without the consent of the insurers. One partner conveyed his interest in the property insured to the other partner without the consent of the insurance company. Held: That the policy was not rendered void thereby: Virginia Fire and Marine Insurance Co. *v.* Saunders, Supreme Court of Appeals of Virginia, LEWIS, P., March 10, 1892 (14 S. E. Rep., 754).—*W. W. S.*

LIBEL—PUBLICATION.—A letter was brought from the post-office by a husband to his wife, in a sealed envelope, addressed to her. She broke the seal and they read it together. In an action for libel brought by the wife against the writer of the letter, held: That she could not recover, as the gist of the action is the injury to the plaintiff's reputation, and the publication of the libel was the plaintiff's own act. In such a case the husband had no legal right to the letter addressed to the plaintiff, as husband and wife are distinct persons, in respect to the publication of a libel: Wilcox *v.* Moon, Supreme Court of Vermont, April 14, 1892, per TAFT, J. (24 Atl. Rep., 244).—*H. N. S.*

LIMITATION OF ACTIONS—INTERSTATE COMMERCE ACT.—The Interstate Commerce Act containing no provision as to the time within which an action shall be brought to recover the amount of freight paid by any person in excess of that paid by any other person for the same service, such actions are to be governed by the State statutes of limitation: Copp *v.* Louisville & N. Rwy. Co., Circuit Court of the United States, District of Louisiana, April 21, 1892, BILLING, J. (50 Fed. Rep., 164). —*H. L. C.*

MECHANICS' LIENS—PROPERTY SUBJECT TO—POWERS OF CREDITOR. —The property of an oil company was sold by a receiver, under executions obtained upon judgments recovered on mechanics' liens filed against the property, and which particularly described it. A creditor corporation who had received in part satisfaction of its demands against the company two bonds, secured by mortgage upon the property, whose lien was subsequent to the mechanics' liens, appealed from the decree affirming the auditor's report, making distribution of the funds, on the ground that the curtilage designated by the claimants was more than sufficient for the necessary uses of the oil refinery. Held: That an auditor must accept a judgment showing the extent of its lien, as certified to him by the proper custodian of the record: Sicardi *et al. v.* Keystone Oil Co. *et al.*, Appeal of Imperial Refining Co., Limited, Supreme Court of Pennsylvania, May 9, 1892, per MCCOLLUM, J. (24 Atl. Rep., 161).—*H. N. S.*

MUNICIPAL CORPORATIONS—POWER TO TAX—DOES NOT INCLUDE POWER TO EXEMPT FROM TAXATION.—A municipal corporation was authorized by its charter to tax "all the real and personal property" in the town. Held: That under this power to tax it had not the power to exempt property from taxation: Whiting *et al. v.* Town of West Point, Supreme Court of Appeals of Virginia, LEWIS, P.; LACY and RICHARDSON, J. J., dissenting, March 17, 1892 (14 S. E. Rep., 698).—*W. W. S.*

MUNICIPALITIES—NEGLIGENCE—DEFECTIVE STREETS—INJURY TO TRAVELLERS—WHO ARE TRAVELLERS?—A statute of Massachusetts provides that streets shall be kept in repair so that they may be reasonably safe for "travellers." Plaintiff and some companions were playing "tag" on a street, stopped to get breath, and plaintiff then walked away from the rest, when he was injured by coming in contact with an electric wire. Held: That the plaintiff was using the street rightfully when the injury occurred, and that the fact that he had been playing, "tag" a short time previous to the injury did not prevent him from being a "traveller" within the meaning of the statute: Graham *et al. v.* City of Boston, Supreme Judicial Court of Massachusetts, ALLEN, J., February 25, 1892 (30 N. E. Rep., 170).—*W. W. S.*

NEGLIGENCE—CONTRIBUTORY—PROJECTION OF LIMBS FROM THE WINDOW OF MOVING CAR.—The slightest voluntary projection of the limbs of a passenger from the window of a moving car constitutes contributory negligence and will bar a recovery in case of an injury caused partly thereby and partly by the negligence of the railroad company: Richmond & D. R. R. Co. *v.* Scott, Supreme Court of Appeals of Virginia, LACY, J., March 31, 1892 (14 S. E. Rep., 763).—*W. W. S.*